

Andrew Sobotka  
Attorney, Tax Division  
State Bar No. 18819900  
Department of Justice  
717 N. Harwood, Suite 400  
Dallas, Texas 75201  
(214) 880-9736 (direct)  
(214) 880-9741 (fax)  
Andrew.L.Sobotka@usdoj.gov

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

IN RE:	)	
Lubbock, Texas -	)	
Highland Medical Center L.P.,	)	
Debtor.	)	Case No. 0850202-rlj11
	)	Chapter 11 Proceeding
	)	

**United States' (IRS) Response in Opposition to McWhorter; Cobb & Johnson's  
Motion for Distribution of Retainer**

The United States, on behalf of its agency, the Internal Revenue Service, opposes McWhorter; Cobb & Johnson's Motion for Distribution of Retainer (Docket No 166) (Motion for Distribution), and requests that the motion be denied to the extent that Debtor's counsel seeks payment for any services or costs related to obtaining, or defending the now vacated August 1, 2008, Order, because such services and costs are the result of misconduct, bad faith, or of no benefit to the Debtor, the estate or creditors.

**The September 4, 2008, Response Deadline Hidden In Debtor's Motion is Improper**

1. The United States objects to the Debtor setting its own expedited response deadline with negative notice language hidden on page 2 of the Motion for Distribution setting September 4, 2008, as the deadline for objections. The Motion was filed on August 21, 2008, and the United States' Response would not be due for at least 20 days - or until September 10,

2008, *at the earliest*. However, the Debtor did not use 20 day negative notice language in its motion and has not moved for or obtained an order for expedited consideration. Instead, it appears that the Debtor's counsel is ignoring the rules of procedure and notice requirements in order to quick pay himself before creditors have a meaningful opportunity to object – or before the Court rejects the Debtor's Motion for Rehearing on its attorney's misconduct.

Debtor's Counsel Should Not Be Paid for His Misconduct

2. Debtor's counsel seeks a distribution from his retainer for legal services and costs incurred in representing the Debtor.

3. Some of the attorneys fees and costs for which distribution and payment are sought include the services of Max Tarbox in obtaining and defending the now vacated August 1, 2008, Order (Docket No. 124) for which the Court found that Max Tarbox engaged in misconduct and awarded the IRS attorneys fees and costs.

4. In particular, Debtor's counsel seeks payment for services rendered by Mr. Tarbox on the following dates that are related to improperly obtaining, defending, or seeking rehearing or reconsideration on the August 1, 2008, Order:

07/31/2008	3.50 and 1.50 hours for MRT
08/01/2008	5.50 and 3.50 hours for MRT
08/02/2008	4.00 hours for MRT
08/03/2008	1.60 hours for MRT

08/10/2008	2.00 hours for MRT
08/11/2008	2.00 and 1.50 hours for MRT
08/11/2008	2.75 hours for TJJ
08/14/2008	2.00 hours for TJJ
08/15/2008	0.50 hours for TJJ
08/19/2008	5.30 hours for MRT

Total of 30.40 hours for MRT at \$249.25 per hour =	\$7,577.20
Total of 5.25 hours for TJJ at \$157.93 per hour =	<u>829.13</u>
Grand total of fees to be disallowed =	\$8,406.33

5. Debtor's counsel should not be rewarded or compensated for performing work in bad faith or based on misconduct to the detriment of creditors.

6. Even if the Debtor's attorneys could convince the Court that 19.60 hours (\$4,885.30) incurred in obtaining the August 1, 2008, Order without proper notice and through affirmative misconduct benefitted Debtor or estate, the remaining 10.8 hours for MRT and 5.25 hours for TJJ (\$3,521.03) incurred after the Order was vacated on August 8, 2008, for meetings with partners to discuss these matters and preparing a motion for rehearing or reconsideration in an attempt to restore Mr. Tarbox's reputation were for Mr. Tarbox's benefit and not the benefit of the Debtor, the estate or creditors.

RICHARD B. ROPER  
UNITED STATES' ATTORNEY

/s/ Andrew L. Sobotka  
ANDREW L. SOBOTKA  
Attorney, Tax Division  
State Bar No. 18819900  
Department of Justice  
717 N. Harwood, Suite 400  
Dallas, Texas 75201  
Andrew.L.Sobotka@usdoj.gov  
(214) 880-9736  
(214) 880-9741 (fax)  
Attorneys for the United States (IRS)

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on September 2, 2008, service of the foregoing pleading was made on the following parties by either court enabled electronic filing or First Class Mail:

Max R. Tarbox  
McWhorter, Cobb & Johnson, LLP  
1722 Broadway  
P.O. Box 2547  
Lubbock, Texas 79408  
(806) 762-0214; (806) 762-8014 (fax)  
[mtarbox@mcjllp.com](mailto:mtarbox@mcjllp.com)  
Attorneys for Debtor

Lubbock Texas - Highland Medical Center, L.P.  
2412 50th Street  
Lubbock, Texas 79412

U.S. Trustee  
1100 Commerce Street, Room 976  
Dallas, TX 75242-1496

/s/ Andrew L. Sobotka  
ANDREW L. SOBOTKA